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June 3, 1999

**FOR SETTLEMENT PURPOSES ONLY
PROTECTED FROM DISCLOSURE
UNDER FRE 408**

Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, Illinois 60604

Re: Avon Products - Skinner Landfill, West Chester, Ohio - *De Minimis* Settlement

Dear Ms. Estes:

We are legal counsel to Avon Products, Inc. ("Avon Products") in connection with the above-referenced matter. As you may be aware, Avon Products entered into a *de minimis* settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action pending in the United States District Court for the Southern District of Ohio. In addition to providing for, among other things, settlement of Plaintiffs' claims for past and future costs and expenses incurred and to be incurred at or in connection with the Skinner Site, that agreement requires certain of the Plaintiffs to attempt to negotiate a *de minimis* settlement between Avon Products (and all other settling *de minimis* parties) and the United States (on behalf of U.S. EPA)) that is at least as protective of the Company's interests as are the terms of U.S. EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995 *Federal Register*.

It is Avon Products' understanding that U.S. EPA Region V has now determined that the Agency can proceed with *de minimis* settlement negotiations and has identified what information it will require in order to confirm that Avon Products qualifies for a *de minimis* settlement at this Site. We understand that the required information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Site Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

FROST & JACOBS LLP

Sherry Estes, Esq.

June 3, 1999

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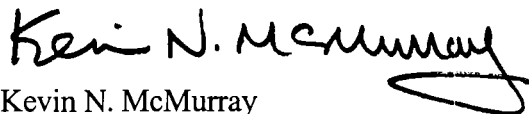
Accordingly, I am enclosing the information requested by U.S. EPA for Avon Products. I believe that this information amply demonstrates that Avon Products is entitled to a *de minimis* settlement consistent with U.S. EPA's model *de minimis* consent decree. Avon Products understands that U.S. EPA and the Plaintiffs will allocate among themselves the monies to be paid by Avon Products and the other *de minimis* settlers in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Avon Products does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Avon Products is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the Company strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

FROST & JACOBS LLP

A handwritten signature in black ink, appearing to read "Kevin N. McMurray", with a stylized flourish at the end.

Kevin N. McMurray
Counsel for Avon Products, Inc.

KNM:llb

Enclosures

cc: Peter Wang, Esq. (w/encls.)

653434.01

Avon Products, Inc.

Settlement Amount: \$2,000.00

Excerpt from Allocator's Preliminary Report :

Avon has had a facility on Progress Place in Cincinnati since 1965. It manufactures and distributes cosmetics, fragrances and toiletries.

Avon conducted what appeared to be a thorough investigation to complete its allocation questionnaire. Avon's typical waste stream consists of office trash and kitchen waste, packaging materials, corrugated cardboard and, periodically, outdated products, scrap soap chips, and solidified cosmetic products. Avon had no information about the quantity of waste collected in the 1960s and 1970s. Since the early 1980s, Avon has used one 42 cy dumpster for compacted office and packaging waste, which is collected 2 - 3 times/week; one 4 - 8 cy dumpster for kitchen waste, which is collected 6 times/week; and one 3 cy dumpster for maintenance scrap waste and landscape debris, which is collected 2 times/week.

Avon used BFI/Dick's Trash from 1965 - 1970 and Rumpke from 1965 to the end of the relevant time period. It also possibly used Dick's Trash Service prior to it being acquired by BFI in mid-to-late 1960s and David Hirschberg Steel Co. (for scrap metal recycling only).

Type of Waste. Based on the investigation and an entry in the Skinner log, Avon determined that it may have disposed of construction/demolition debris at the Site in December 1970 (the Skinner log entry is December 22, 1970). This waste would have resulted from an expansion project at its plant and would have consisted of concrete and metal, I was told. Avon believed that its waste would not have contained any asbestos, metal piping, tanks or containers, painted wallboard, paint or paint thinner or waste oil based on the nature of the expansion work. Construction debris would have been one shipment in a standard roll-off box. Avon felt.

In addition, one employee interviewed recalled possibly using Skinner on "up to 6 occasions in the late 1960s" to dispose of "outdated finished goods and/or drums of excess non-hazardous products." Each shipment of outdated products would have been in glass, plastic or cardboard containers placed in trucks which could hold a maximum of 100 cu. ft. (about 3.7 cys). The company states that even if outdated products were destined for disposal at the Site, they may have been diverted to flea markets or the like.

The Avon employee recollection is similar to that of Elsa Skinner's recollection that Avon dumped an old stock of beauty products. She recalled that it took "quite a few loads over a number of days" on one occasion. She also recalled one other occasion of a "sizeable load." Maria Skinner Roy also recalled Avon waste product in the 1960s although she could not quantify it.

In his deposition, Ray Skinner (pp 137, 139, 140) mentions Martin Clark hauling Avon products/waste to Site. He recalled 15-20 loads (20-30 cy each) of Avon products over a number of years in the 1970s or 1980s. But he also testified that he gave most of the material away. R. Skinner Depo., p. 618-622.

Ray Skinner did not discuss the construction debris in his deposition although he did recall it in his 1991 administrative deposition (p. 16).

Waste-in Amount. There is no doubt in my mind that the district court would conclude that Avon waste reached the Site and that the waste included construction debris and product that could not be sold. The question is how much? The construction debris cost in the Skinner log was \$100 in 1970. That amount likely represented more than one load as Avon suggests but the matter is not free from uncertainty. The Avon employee testimony would generate 20-25 cys of waste. Elsa Skinner's testimony could be interpreted to mean 9-16 loads times perhaps 5-10 cys (as the capacity for a small dump truck). Ray Skinner's testimony would generate a range of 300 to 600 cys but this testimony may overlap Elsa Skinner's testimony and because it did not involve a direct disposal and because Ray Skinner said much of it was given away, I am not going to use his testimony in calculating a waste-in amount. Considering all of the evidence, I have elected to assign Avon a waste-in amount of 22 cys of demolition debris (I assumed one-half of \$100 represented a disposal charge and assumed 2 loads at 11 cys per load by dump truck based on the Morton International discussion below), plus 65 cys to account for the product wastes (which is roughly the midpoint of the average of Elsa Skinner's waste total and the Avon employee total) for a total of 87 cys.

At P. 34-32

Excerpt from Allocator's Final Report:

Avon Products, Inc. ("Avon") filed a joint comment brief dated November 13, 1998 with Butler County, Consolidated Rail Corporation, Village of Glendale, Hilton Davis Company, City of Monroe, City of Montgomery, and Queen City Barrel.

These parties supported the findings of fact and conclusions of law contained in the Preliminary Report. These parties also contingently agreed with the allocations: "however, such agreement is of course contingent upon the allocations for all parties involved in this process becoming final allocations, and all parties agreeing to pay their respective share of the clean-up costs for this site in relation to their individual allocations set forth in the preliminary report."

They ask the Allocator to make one substantive revision - "that the allocator delete all reference to a potential orphan share at this site and the separate recommendation that the United States agree to 'absorb' such potential orphan share. Counsel for the federal agencies involved as Defendants in this process have indicated that as long as such discussion is contained in the report they feel compelled to seek and then file written comments from counsel for U.S. EPA regarding the Agency's reaction to the discussion and the recommendation." Any submission by the EPA on an orphan share would be premature and inconsistent with the confidentiality required under the CMO liability allocation phase of this ADR process, these parties felt. Once everyone has submitted appropriate documents demonstrating the inability to pay the full share represented by their allocation of liability, then the true orphan share will be known at this Site. They suggest, when the final report and any financial demonstrations are in hand, then would be the appropriate time to approach the EPA to discuss the orphan share. "Consequently, deleting the discussion of the potential orphan share from the final report will not prejudice the parties collective efforts to convince the Agency to absorb the share during the settlement phase of this case and will maintain the integrity and confidentiality of this process."

These comments may have been overtaken by subsequent events. And I do agree that orphan shares may not be determinable in some cases without a showing of the absence of financial wherewithal. I have also decided to segregate the discussion of the orphan share issue as a separate appendix to this Final Report that supersedes any conflicting information contained in the Preliminary Report.

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
AVON PRODUCTS INC	85	0	372906	0.0228%	262252	0.0000%	0.00%	0.00%			0.00228%